

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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AHAVA FOOD CORP. ,

Plaintiff,

-against-

7:04-CV-918

HEFESTUS, L.T.D. ,

Defendant.

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THOMAS J. McAVOY,  
Senior United States District Judge

DECISION & ORDER

Plaintiff commenced this diversity action on August 3, 2004 asserting that the Defendant, "a corporation organized under the laws of the nation of Israel," Compl. ¶ 2, sold Plaintiff defective food packaging equipment. See generally, Compl. Presently before the Court is Plaintiff's motion for default judgment pursuant to FED. R. CIV. P. 55 seeking a judgment against Defendant in the amount of \$180,000.00. In support of the motion, Plaintiff's counsel submits an affidavit asserting, *inter alia*, that

[t]he summons and complaint was [*sic*] served personally on Hefestus L.T.D., on October 22, 2004. The summons and complaint were served in accordance with rules of the court and the relevant international treaty.

Antonucci March 4, 2005 Aff., ¶ 6 [dkt. # 9].

The Court notes that the Return of Service [dkt # 3], which

was acknowledged before a Consular Officer in the United States Embassy in the State of Israel, indicates only that the summons and complaint were "[s]erved personally upon the defendant. Place where served: Hefestus LTD at Kibuts Mishmarot." There is no indication who the summons and complaint were served upon at Hefestus LTD. While counsel submitted an affidavit in support of the application for entry of default that attested that the summons and complaint were served upon "Rina, the secretary at Hefeustus [sic]," see Antonucci 12/17/04 Aff. [dkt. # 4], there is no indication where counsel gets this information or whether "Rina" is authorized to accept service on behalf of the corporation.

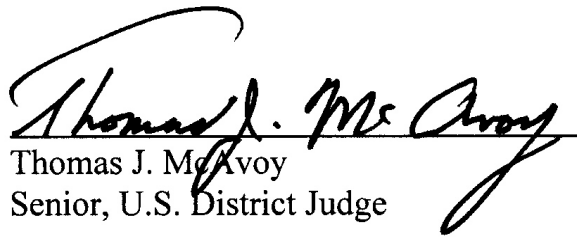
The Federal Rules of Civil Procedure provide that "service upon a ... foreign corporation ... shall be effected ... (2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph 2(C)(i) thereof." Fed. R. Civ. P. 4(h)(2) (emphasis added). Unless the manner of service in this case is pursuant to a "internationally agreed means reasonably calculated to give notice," Fed. R. Civ. P. 4(f)(1), service would appear to be in violation of Rule 4(h)(2). Yet, despite counsel's contention that service was in accordance with "rules of the court and the relevant international treaty," there is no indication what "rules of the court" or what "international treaty" he refers to in this regard.

Given that the docket indicates that on December 28, 2004 (eleven (11) days after the Clerk made an entry of default on the record), Magistrate Judge Lowe rejected a document filed by Defendant, prudence dictates that the motion for a default judgment be denied with leave to renew. On the renewed motion, Plaintiff's counsel can give a more thorough account of the manner of service and identify more specifically the law and treaty that Plaintiff contends governs this case.

Therefore, the motion for a default judgment is denied with leave to renew.

**IT IS SO ORDERED**

DATED: April 12, 2005

  
Thomas J. McAvoy  
Senior, U.S. District Judge